United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7437

To be argued by
A. SETH GREENWALD

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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SHIRLEY HERRIOTT BROOKS, GLORIA JONES, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

-against-

FLAGG BROTHERS, INC., individually and as representatives of a class of all others similarly situated, HENRY FLAGG, individually and as President of Flagg Brothers, Inc., THE AMERICAN WAREHOUSEMEN'S ASSOCIATION OF REFRIGERATED WAREHOUSES, INC., WAREHOUSEMEN'S ASSOCIATION OF NEW YORK AND NEW JERSEY, INC., THE COLD STORAGE WAREHOUSEMEN'S ASSOCIATION OF THE PORT OF NEW YORK, and LOUIS J. LEFKOWITZ, as Attorney General of the State of New York,

Defendants-Appellees.

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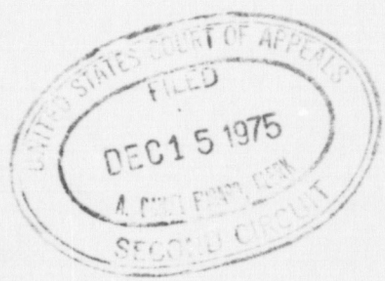

BRIEF OF INTERVENOR-DEFENDANT-APPELLEE ATTORNEY GENERAL

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BRIEF OF INTERVENOR-DEFENDANT-APPELLEE ATTORNEY GENERAL

Questions Presented

1. Does non-judicial sale in accordance with U.C.C. § 7-210 constitute state action?

a) Does this action really present this question?

2. Assuming state action, does non-judicial sale violate due process requirements of the Fourteenth Amendment?

Statement

This is an appeal from an order of District Judge Werker of the Southern District of New York, July 7, 1975, denying plaintiffs' motion for class action and summary judgment (A 205)* and granting defendants' motion to dismiss (A 206).

The original plaintiff and intervenor-plaintiff (Jones) are both residents of Westchester County, and brought this action pursuant to 42 U.S.C. § 1983, with jurisdiction alleged under 42 U.S.C. 1343, at least as is common to both plaintiffs. They sought damages and a declaration that Uniform Commercial Code §§ 7-209 (warehouseman's lien) and 7-210 (non-judicial sale were unconstitutional as denying them "due process of law."

Facts

Briefly stated both plaintiff and intervenor-plaintiff found themselves in a situation where they had been evicted

* Numbers in parentheses preceded by "A" refer to the Appendix.

from their apartments. The City Marshal* had accomplished the eviction and plaintiffs' household goods, as a consequence, were "on the street". Though there is some factual dispute, defendant-mover Flagg Brothers, Inc. took over the goods to remove them from the street and store them pending instructions from plaintiffs, with a further caveat that the mover expected to be paid for its services.

It is alleged that defendant asserted its warehouseman's lien (U.C.C. § 7-209) by refusing to return the stored property until its charges were met. Further, it is asserted that an unnamed employee, not a party herein, of defendant Flagg Brothers, Inc., "threatened" plaintiffs with sale of the goods pursuant to non-judicial sale (U.C.C. § 7-210).

While the plaintiffs assert many facts contesting the factual validity of the lien and the amount thereof (Applts' Br., pp. 39-40), the complaint herein only asked a judgment as to the constitutionality of U.C.C. §§ 7-209, 7-210.

Opinion Below

The District Court in its opinion (A 207-A 219) found the various challenged sections of the Uniform Commerical Code did not constitute "state action" and the action of defendants

* Originally named as a party but discontinued as against him.

were not done under "color of state law." As a consequence, the Federal court found itself without jurisdiction, under 28 U.S.C. § 1343(3).

It was stated there was no binding precedent that state action was present as to the existence of a possessory lien and foreclosure by non-judicial sale. The opinion then proceeded to apply the various tests of state action and concluded that U.C.C. § 7-209 as to the warehouseman having a lien, was not state action. A similar conclusion was reached as to U.C.C. § 7-210 (non-judicial sale), regardless of whether the power flowed from a contract provision or the statute (§ 7-210) itself.

Statute Involved

Uniform Commercial Code § 7-209 (New York):

> (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrate and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is

claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under Section 7-503.

(4) A warehouseman loses his lien on any good which he voluntarily delivers or which he unjustifiably refuses to deliver.

§ 7-210 (as pertinent):

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as

follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held.

The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper

> of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

POINT I

THE WAREHOUSEMAN'S LIEN DOES NOT INVOLVE STATE ACTION

While the appellants state that they challenge the warehouseman's lien, U.C.C. § 7-209, Appl'ts' Br. pp. 12-14, nowhere in their lengthy brief is it argued that the lien is unconstitutional. Apparently, the appellants have concluded, by their silence, that the lien does not involve state action.

Such a conclusion, or silent concession, is well founded. The opinion below and numerous authority support the proposition that the statutory codification or reenactment of the common law retaining lien does not involve any state action.

The opinion below (A 210 through A 218) explores sufficiently and cites, in part, the extensive authority, that the mere existence of a possessory and retaining lien does not constitute "state action." Given appellants' lack of discussion we believe the lien itself is not at issue now.

POINT II

U.C.C. 7-210, WHETHER CONTAINED IN THE CONTRACT OF MOVING AND STORAGE, OR CONTROLLED BY THE STATUTE, DOES NOT INVOLVE "STATE ACTION."

A. Status of Action for Continuing Consideration

In the instant appeal, the facts show that no sale of the goods detained under the lien ever took place or even that the preliminary steps such as notice and advertisement were undertaken. While appellants allege threats (A 11), the record (A 86) also show "no intention of selling the goods." At present, all goods have been returned (A 129, Appl'ts' Br. p. 12).*

Of course, in an earlier decision in this action then District Judge Gurfein ruled, 54 F.R.D. 409, 413 (S.D.N.Y. 1974) that agreement not to invoke § 7-210 would not moot the suit. However, that was in the context of the continuing detention of appellant Jones' goods. Such is not the case now.

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* Payment of the charges does not prevent appellant Jones from suing for alleged overcharges or an invalid lien. Dininny v. Reavis, infra, 100 Misc. 316.

Regardless of whether there is state action, this appeal is in a fundamentally different posture than Hernandez v. European Auto Collision, Inc., 487 F. 2d 378 (2d Cir. 1973). In Hernandez the sale actually took place, 487 F. 2d at 382. And declaratory relief is not available, despite an allegation of past wrongdoing, where there is no continuing live controversy. Hernandez (Timbers, J., concurring), at 387. Contrasted with the instant case, the sale provided a basis for continuing jurisdiction. However, no sale can take place now as the moving company no longer has possession.

It should be noted that appellant Jones was informed by an unnamed employee, not a defendant, that goods might be sold (A 79, 142) As we could only have a claim for damages, respondeat superior does not apply to this Civil Rights action. Adams v. Pate, 445 F. 2d 105, 107 (7th Cir. 1971).

B. Hernandez v. European Auto Collision and State Action

The opinion below was undoubtedly correct that Hernandez v. European Auto Collision, supra, 487 F. 2d 378 is not controlling on the issue of state action. All agree that "state action" was not discussed in that decision. It was not an "issue presented" by appellants in that case. Brief for

plaintiff-appellant in Hernandez, pp. 2-3, or a "question presented" by intervenor-appellee's Br., p. 1. State action was passed on sub silentio.*

Questions of federal jurisdiction that are passed on sub silentio, are not binding precedent on the issue of jurisdiction. Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 210 F. 2d 623, 628-629 (3d Cir. 1954), affd. 348 U.S. 437 (1955), reh. den. 349 U.S. 925. Cited as authority for this proposition in Westinghouse is United States v. L. A. Tucker Truck Lines, 344 U.S. 33, 38 (1952) wherein it was stated:

> "Even as to our own judicial power, or jurisdiction, this Court has followed the lead of Mr. Chief Justice Marshall

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* This characterization is confirmed by a statement in an article by appellants' attorney, Martin A. Schwartz. See: New York Law Journal, February 19, 1974, p. 1, c. 1 (Schwartz, Poverty Law):

> "The concurring judges [in Hernandez, nor, might we add, the opinion of the court] curiously did not even mention the state action issue. Since the presence of state action is an absolute prerequisite to both (a) a determination of the procedures required under the Due Process Clause and (b) federal court subject matter jurisdiction under 28 U.S.C., section 1343(3), it must be assumed that the court found state action sub silentio."

> who held that this Court is not bound by a prior exercise of jurisdiction in a case where it was not questioned and it was passed sub silentio."
> (Footnote omitted)

Thus, it is clear that Hernandez, supra, was not binding precedent on jurisdiction or the presence of "state action" to sustain same and the opinion below properly proceeded to review the issue.

C. State Action and Non-Judicial Sale (U.C.C. 7-210)

At the onset, it must be explained that we do not think non-judicial sale is at issue in this case. The only operative facts herein were that appellants' goods were subject to the warehouseman's lien and retained thereunder. Defendant-appellant mover never invoked his power of sale pursuant to U.D.C. § 7-210. Indeed, appellants would have had a tenable state claim that the mover had no right to simply rely on 7-209 lien and never move to sell the goods. Morgan v. Murtha, 18 Misc. 438, 42 N.Y.S. 374 (App. T., 1896). As a final note, appellants were not injured by 7-210 as it (non-judicial sale) was not exercised.

The analysis below of the status of 7-210 and non-judicial sale is correct. This Circuit has already held in the

area of self-help repossession analogous to U.C.C. § 9-503, and with wage-assignments that no state action is present. Shirley v. State National Bank of Connecticut, 493 F. 2d 739 (2d Cir. 1974), cert. den. 95 S. Ct. 65 and Bond v. Dentzer, 494 F. 2d 302 (2d Cir. 1974), cert. den. 95 S. Ct. 325 (1974). In particular, Bond is instructive that the Legislature's action in passing U.C.C. 7-210 which merely reenacts the right to enforce from General Business Law § 118 (1907) and further back to 1879 (see opinion below, ftn. 17, A 222), does not constitute state action as either (1) partnership (Bond, at 305) (2) encouragement (Bond, at 307), or (3) a traditional state function (Bond, at 311).

Regardless of whether the sale provision is in the moving and storage contract, see Smith v. Bekins Moving and Storage Co., 384 F. Supp. 1261 (E.D.Pa. 1974) or as part of the codification and alteration of the common law, U.C.C. § 7-210, there is insufficient state involvement to constitute state action.

The whole statutory scheme and regulation here (lien and enforcement) does not in any way involve a state officer.

Parks v. "Mr. Ford", 386 F. Supp. 1251, 1260 et seq., (E.D. Pa. 1974). This case extensively discusses liens and enforcement, failing to find any state action.

Further, the statute, 7-210 is merely permissive. Obviously the defendant could still, if it wishes, reduce the claim to judgment and execute on the property. In this context the state involvement is merely permissive and not state action. Jackson v. Metropolitan Edison Co., 419 U.S. 345, 357 (1974).

The Fuentes v. Shevin, 407 U.S. 67 (1972) line of cases* all concern the exercise of state power to transfer (or "seize") property from one person to another pending a final disposition. There is undoubtedly a "seizure". Certainly, the cases do not concern where legal title lies.

Reliance by appellants on Hall v. Garson, 430 F. 2d 430 (5th Cir. 1970) and Blye v. Globe-Wernicke Realty Co., 33 N Y 2d 15 (1973) is misplaced. These cases do not involve sale, only the lien. Even in this context they have often not been followed. Thus, the Hall "state function" concept was not followed by the

* Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972); Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974); North Georgia Finishing Co. v. Di Chem, Inc., ___ U.S. ___, 95 S. Ct. 719 (1975).

same Circuit in James v. Pinnix, 495 F. 2d 206 (5th Cir. 1974). See also Davis v. Richmond, 512 F. 2d 201 (1st Cir. 1975) and Blye in the innkeeper's lien area has not been followed in other areas by federal courts, see Anastasia v. Cosmopolitan National Bank, ___ F. 2d ___, (7th Cir. 1975), 44 U.S.L.W. 2164* and even by New York courts, see IDS Leasing Corp. v. Hansa Jet Corp. (Sup. Ct. Westchester Co.) (N.Y.L.J., Mar. 28, 1975; p. 18, c. 2), on appeal. And the reversal of Jones v. Banner Moving & Storage Inc., 48 A D 2d 928 (2d Dept. 1975) of 78 Misc 2d 762, completely vitiated the lower court's opinion in Jones. Indeed, the facts of Jones demonstrate that unpleaded non-constitutional issues should be tried first before deciding constitutional issues. Cf. Magro, infra, 338 F. Supp. 464, 469.

The weight of authority clearly tips against finding state action in the case of possessory liens. In this area where contract can control, "ideological tinkering with state law" is unwarranted. See Fuentes v. Shevin, supra, 407 U.S. 67, 102-103 (dissent, White, J.).

These provisions, the Court is reminded, that we are dealing with are part of a Uniform Commercial Code and is the

* This case seems to reject Collins v. Viceroy Hotel Corp., 338 F. Supp. 390 (N.D. Ill. 1972).

law virtually throughout the country. It should be interpreted uniformly.* The overwhelming body of law finds U.C.C. liens and resultant non-judicial sale valid, not involving state action. This Court should adhere to a uniform interpretation, which is in the spirit of the Code. Alleged vagaries of state law should not result in differing results. The Code is an exposition of private rights, not involving state action. Of course, those rights can be enforced in court.

POINT III

NON-JUDICIAL SALE, U.C.C. § 7-210 DOES PROVIDE DUE PROCESS IN THAT THE APPELLANT HAS NOTICE AND THE OPPORTUNITY TO BE HEARD

Regardless of the presence or absence of state action, it is submitted that enforcement of the warehouseman's lien via non-judicial sale provides due process under relevant concepts of the Fourteenth Amendment.

A.

The enforcement of the lien herein, if it had occurred, would be in accord with the basic nature of a lien and with the historical and compelling purpose of the transaction.

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* See 1 Uniform Laws Annotated (U.C.C.), forward, X-XII; General Comment, XV.

Generally a lien is defined as a charge upon property for the payment or discharge of a debt or duty. As a common law lien it was the mere right in one person to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. Agnew v. American Ice Co., 2 N.J. 291, 66 A. 2d 330, 334, 10 A.L.R. 2d 232 (1949); Rohrbach v. Germania Fire Ins. Co., 62 N.Y. 47 (1875). Therefore, under the common law as well as by statute the lienor has no obligation to return the property of another until he is paid for his just charges. In the instant case the appellee warehouseman could not have been required to return appellants' property until its claim was paid. As with many liens (Lien Law §§ 200-202, 204), U.C.C. § 7-210 sets forth a non-judicial procedure for enforcing these charges. In re Yale Express Co., 370 F. 2d 433 (2d Cir. 1966).

There is a justifiable basis for the sale provision, especially in the case of the warehouseman. If the charges for moving and storage are not being paid and there is no reasonable probability they will be paid, it is imperative that the charges which automatically mount up as time passes be kept as low as possible. In addition the security, stored household goods, depreciates. The holder of the lien must take steps to enforce

his lien promptly and not allow the charges to mount. Morgan v. Murtha, supra, 18 Misc. 438. The same procedure applies to a pledge with a pawnbroker (N.Y. General Business Law, Article 5). Indeed, in the absence of restrictive statutory provisions the sale on a pledge may be made without the same protective provisions. In re Yale Express Co., supra; see Matter of Kiamie, 309 N.Y. 325, 331 (1955). The last cited case indicates the concern of the New York Courts that required formalities for the conduct of any sale be fully complied with. So here, if appellants have any proper claims of an unjust charge or lack of consent to storage, the statute provides more than ample opportunity to present a judicial challenge prior to or subsequent to such sale.

Dininny v. Reavis, 100 Misc. 316 (Sup. Ct., N.Y. Co., 1915), affd. 178 App. Div. 922, 165 N.Y.S. 97 (1st Dept. 1917) is in point. The plaintiff there contended that Lien Law § 200 allowing public sale of a car to satisfy a lien for storage was unconstitutional because it provided no opportunity for a hearing in case the owner disputed the amount of the lien. Therefore, he said, there was a taking of property without due process. This is the same issue as the appellants attempt to present here. Dininny states that the amount of the lien is the "sum due" from the owner, not the sum claimed by the lienor.

The latter has no protection if he makes a wrongful claim. If he demands more than is actually due, he is liable for conversion and must pay damages. The owner of the goods may dispute the sum and the law provides many remedies. To quote:

> "He [the owner] can tender the amount, if any, which he claims that he owes and replevy the property from the possession of the lienor if he then refuses to surrender it. He can pay the amount claimed by the lienor and recover back any excess over what was actually due as money paid under duress. If the property is illegally threatened with sale, he can enjoin the sale and determine in the injunction suit what the proper amount of the lien is. He can let the sale proceed and sue all parties concerned for the conversion of his property."

In the present case the appellants' difficulties were not in the absence of due process but in the failure to plead a cause of action which would entitle them to any relief before the sale. It is undisputed that the household goods were delivered for moving and storage. The duration of the storage became open-ended. While appellants suggest no consent to store (a state defense) and that the amount of the lien may be excessive (Br. p. 39), the fact also undisputed is that they made no reasonable tender to the warehouse and failed to pick up the goods when offered.

The right of the warehouse to effect the sale to satisfy the lien can not be defeated by the refusal or inability to pay the proper amount of the lien by any judicial hearing any more than the garageman with whom property is stored or pawnbroker or the banker with whom stock or other securities have been pledged for a loan. Indeed, in each of these instances unless a convenient and relatively speedy method of satisfying the lien was provided for, the particular type of business transactions would be substantially hampered. In the case of the garageman particularly any such restriction as is argued for by counsel for appellants would have a contrary deleterious effect to such persons as his clients, since it would inevitably result in the warehouse insisting on substantial payment in advance, even for preliminary moving and storage.

B.

We submit with respect to due process, Magro v. Lentini Bros. Moving and Storage, 338 F. Supp. 464 (E.D.N.Y. 1971), affd. 460 F. 2d 1064 (2d Cir. 1972), cert. den. 406 U.S. 961 (1972) is still valid as to the constitutionality of non-judicial sale. While the concurring decision (Timbers, J.) in Hernandez, supra, thought otherwise, this was before the limitation of Fuentes contained in Mitchell v. W. T. Grant Co., supra.

The Supreme Court said in Lindsey v. Normet, 405 U.S. 56, (1972), on a due process challenge to the Oregon Forcible Entry and Wrongful Detainer Statute, a landlord-tenant situation, made the cogent statement: "(b)ut the Constitution does not provide judicial remedies for every social and economic ill". It was noted by the court there that the landlord had a constitutional right not to have his property or income confiscated.

To paraphrase Lindsey (405 U.S. at 74-75), the Constitution has not federalized the substantive law of warehousemen-customer relations. Mandatory judicial hearings are not required where there is proper notice. Anderson National Bank v. Luckett, 321 U.S. 233 (1944); North Laramie Land Co. v. Hoffman, 268 U.S. 276, 283 (1925); Huling v. Kaw Valley Co., 130 U.S. 559, 563-564 (1889); Ballard v. Hunter, 240 U.S. 241, 254-257, 262 (1907).

In sum, U.C.C. § 7-210 is not subject to successful challenge on the ground of lack of procedural due process. While providing the warehouseman with a relatively speedy method of disposing of repaired goods to satisfy the lien, it provides adequate means to the owner of the property to assert any objection thereto by instituting judicial action.

Dininny v. Reavis, supra; Lindsey v. Normet, supra, 405 U.S. at 66. This must be proceeded by adequate notice here, at least 25 days, so that a fair opportunity is accorded to mount judicial action prior to the sale. A prior mandated judicial hearing, apparently contended for by counsel for plaintiff, is plainly not requisite. Whether the warehouseman serves a court summons or a sales notice the owner still has to answer if he desires to challenge the lien. To paraphrase the District Court in Magro, keeping all these circumstances and possible legislative justifications in mind, there is no tenable challenge to the procedure outlined in U.C.C. § 7-210, on due process grounds.

We recognize that Adams v. Dept. of Motor Vehicles, 11 Cal. 3d 146, 156, 520 P. 2d 961 (1974) did not think the time sufficient to get a hearing on the lien. However, this approach fails to give cognizance to fact that even an early-trial requirement does not deny due process. Lindsey v. Normet, supra, 405 U.S. at 64-65. It also ignores the reality of what happens when the person challenging the lien enters court. In almost all cases cited by appellants in their Appendix "A", the goods were returned or a court order prevented sale. If the sale took place, as in Hernandez, it was after decision. Obviously, in the months involved the plaintiff could have obtained a judicial determination on the merits.

As in Mitchell, supra at 611-612, possession is involved and postponement of judicial inquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate. Appellants herein could have long ago received a determination of the validity and amount of the lien, if they so choose. And unlike Mitchell, "seizure" is not at issue. Appellants had no right to possession of the stored goods absent payment or some security.

The fairness of placing the burden on appellants to initiate the legal challenge to the liens,* contrary to the concurring opinion in Hernandez, has been recognized in Phillips v. Money, 503 F. 2d 990 (7th Cir. 1974) cert. den. 420 U.S. 934, where the court said (at 994-995):

> "In contrast here the voluntary surrender of the motor vehicle to the garageman, albeit for the limited purpose of performing authority repairs, results in the garageman having both a legal property interest, in the form of a lien, and actual possession. Interference with the status quo would be necessary to enable the owner to regain possession prior to final judgment.

* Who must initiate judicial action is not determinative. Access to the court cannot be conditioned on ability to pay for costs. Magro, supra at 468, ftn. 9 citing Boddie v. Connecticut, 401 U.S. 371 (1971).

Under these circumstances we cannot conclude that the Indiana procedure, permitting the repairman to retain possession and imposing on the car owner the burden of initiating litigation to challenge his right and resolve the disputes is fundamentally unfair. See Hernandez v. European Auto Collision, Inc., 346 F. Supp. 313, 318-319 (E.D.N.Y. 1972), revd. 487 F. 2d 378 (2d Cir. 1973); Adams v. Dept. of Motor Vehicles, supra."

CONCLUSION

THE JUDGMENT SHOULD BE AFFIRMED.

Dated: New York, New York
December 11, 1975

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Pro Se - Intervenor -
Appellee in Defense of
Constitutionality pursuant
to Executive Law § 71

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JEANETTE MARCELINA , being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, attorney for Intervenor-Defendant-Appellee herein. On the 15th day of December , 1975 , she served the annexed upon the following named person :

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Attorneys in the within entitled action by depositing three true and correct copies thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorneys at the addresses within the State designated by them for that purpose.

Jeanette Marcelina

Sworn to before me this
15th day of December , 1975

A. Seth Greenwald

Assistant Attorney General
of the State of New York